Appendix L: Appeal Complaint; Acceptance of Complaint; Response to Appeal Complaint

Arbitrazh Court for Samara Oblast
[address of the court]

Plaintiff: OAO Stock Commercial Bank "TOKOBANK" in the person of its representative
[address of the Samara branch]

Respondent: ZAO "Ekvator"
[address]

Value of the suit: 4,086,250 rubles
State fee: 16,015 rubles, 62 kop.

APPEAL COMPLAINT
On the Decision of the Arbitrazh Court of Samara Oblast of 12 April 1999 in Case No. A55-329/99-23

The arbitrazh court for Samara Oblast on 12 April 1999 adopted a decision on the refusal to satisfy the claims of the Plaintiff concerning the exaction from the Respondent of indebtedness due in the amount of 4,086,250 rubles, taking account of the amended claim through the procedure of Article 37 of the APC RF.

The given decision of the court was issued in crude violation of the norms of substantive and procedural law, and is illegal and without basis. The court avoided the consideration of the dispute in its substance. It did not give the correct legal qualification to the actual legal relationship of the parties, did not analyze and did not evaluate the evidence presented, and did not decide the question of the existence of rights and obligations of the parties in relation to the material object of the dispute.

In fact, the court limited itself to a finding that the credit to the Plaintiff was issued in the form of the transfer of four bills of exchange, a so-called bill of exchange credit on the basis of the additional agreement No. 14 of 26/12/97, in the sum of 3,000,000 rubles. But since, in the opinion of the court, the obligation of the Respondent cannot be based upon a credit contract, then the Respondent is not obligated to return anything.

T**he conclusion of the court that the legal relations which developed between the Plaintiff and the Respondent could not be determined by a credit contract is incorrect, since the contract does not contradict any norm of legislation and was not recognized as void. And although it is not directly envisioned by law, on the basis of the general principles and the meaning of civil legislation it gives rise to civil-law**

rights and obligations of the parties in accordance with point 1 of Article 85 of the Civil Code of the RF.

The court completely ignored the evidence presented by the Plaintiff of the existence and lack of execution of obligations on the part of the Respondent concerning the payment of indebtedness, specifically:

On 11 April 1997, credit contract no. 32/97 was concluded between the Plaintiff and the Respondent. In accordance with point 1.1, the Respondent was provided credit in an amount of 1,000,000 rubles. For the conduct of banking operations concerning the credit, a credit account No. 45206810100160000037 was opened for the Respondent, on the basis of a notation from the tax inspectorate No. 4612.

In accordance with additional agreement No. 14 of 26/12/97 to the credit contract 32/97 of 11/04/97, the Respondent was provided with a bill of exchange credit, that is was provided a loan with the use of the bills of exchange without the purchase by the client of the bills of exchange of the bank. This type of credit is regulated by banking rules, including the Instructions of the Central Bank of the RF No. 26 of 23/02/95. Being guided by this the Plaintiff, in the issuance of the credit, took the following banking actions:

> deposited the sum of 3,000,000 rubles into the credit account, and from the credit account transferred them to the bill of exchange account of the client No. 1019677, opened o the basis of the instruction of 26/12/97. On the basis of the acknowledgement-acceptance, the Respondent received the bills of exchange, which was confirmed by the court of the first instance.

The Plaintiff by the given contract took upon itself the obligation to issue to the Respondent its own bills of exchange and upon the presentation of the bills of exchange to pay them. The Plaintiff showed by all of the material presented that it executed its obligations under the contract. The Respondent obligated itself to return the money in an amount equal to 3,000,000 and to pay interest in the procedure defined by the additional agreement No. 14. The Respondent did not execute its obligations. No evidence was presented of the payment of the indebtedness.

In the consideration of the given dispute it is important to answer only one question — did the Plaintiff provide money (credit) to the Respondent in the procedure and on the conditions envisioned by the credit contract? (Article 819 of the Civil Code of the RF).

In citing Article 819 of the Civil Code of the RF, the court interpreted literally the term “money” which is contained in the norm and did not take into account the statement of the law “in the amount and on the conditions envisioned in the contract.” And in addition to this, in accordance with Articles 861-862 of the Civil Code of the RF, the provision of money (banking operations) is conducted in a non-cash form. In the accomplishment of non-cash settlements, payment is permitted (Article 862 of the Civil

Code of the RF) by payment order, by credit, by check, by bank transfer, and also settlement in any other forms envisioned by law, by banking rules established in accordance with it, and by the customs of business activity applied in banking practice.

In existing banking practice, money on credit is provided by several means: directly transferred to the settlement account of the borrower, by instruction of the client transferred by payment order to the account of a contracting partner for particular purposes (directed use of the credit), or by means of the issuance of bills of exchange of the bank without their purchase.

A BILL OF EXCHANGE — in civil circulation is one of the forms of non-cash settlement, and in credit is a means for the provision of money, since the subject of a bill of exchange is also and only money.

The special features of a bill of exchange as one of the forms of non-cash settlement is that it is issued into the hands of the client and has a period and procedure for its presentation for payment.

Thus, the relations of the parties under the stated contract are, in their legal nature, analogous to those envisioned by Article 819 of the Civil Code of the RF, since money was provided by means of the issuance of simple bills of exchange, allowing the Respondent either to receive the money itself or to use the bill of exchange as a means of payment in a settlement [with another party], which is what it did.

On the basis of that set forth and being guided by Article 810, point 1, Article 8, point 1, and Article 6 of the Civil Code of the RF and Articles 145, 157 of the APC RF,

I REQUEST

1. That the decision of the court of first instance by wholly reversed and that a new decision be adopted.
2. The court costs for the payment of the state [filing] fee be imposed upon the Respondent.

Attachments:

1. Evidence of the sending of a copy of the appeal complaint to the Respondent.
2. Motion for delay in the payment of the state fee;
3. Power of attorney No. 227 of 29/03/99 for the authorized representative of the Plaintiff;
4. A copy of the decision of the arbitrazh court for Samara Oblast of 12 April 1999, No. A55-329/99-23.

For AKB “TOKOBANK” T.P. Kalinkina
By Power of attorney No. 227

[signature]

D E T E R M I N A T I O N

On the Acceptance of an Appeal Complaint for Proceedings

Samara Case No. __A55-329/99-23___

__13 May 1999__

Judge of the Arbitrazh Court of Samara Oblast ___K.G. Viktorova_____, having considered the appeal complaint of ___OAO AKB "TOKOBANK" of the city of Samara___ concerning the decision (determination)

of ___12 April 1999 in case No. ___A55-329/99-23____

Being guided by Article 152 of the Arbitrazh Procedure Code of the Russian Federation

HAS DETERMINED:

1. To accept the appeal complaint of ____OAO AKB "TOKOBANK" of the City of Samara of __07/05/99____, No. __487 VX___ for proceedings.

2. Appoint the case for court consideration in the session of the arbitrazh court on _____11 June___ 199_9_, at ___10:30__ in the premises of the court, room No. __205A__.

The petitioner is granted a delay in the payment of the state fee until the adoption of the court decision._____

Judge K.G. Viktorovna
[signature]

Arbitrazh Court for Samara Oblast

ZAO "Ekvator"
[address]

Copy: OAO AKB "TOKOBANK"
[address]

RESPONSE
To the Appeal Complaint in Case No. A55-329/99-23

The plaintiff in this case — the Samara branch of OAO AKB "TOKOBANK" filed suit against ZAO "Ekvator" concerning the exaction from ZAO "Ekvator" of 3,570,000 new rubles according to credit contract No. 32/97 of 11/03/97 and additional agreements to it No. 14 of 26/12/97 and one without number of 26/12/97. Later, during the course of the court consideration of the case, the sum of the claims of the suit was increased to 4,086,250 rubles.

By a decision of the arbitrazh court for Samara Oblast of 12/04/99, the suit of the Samara branch of OAO AKB "TOKOBANK" was refused, in connection with the failure of the bank to fulfill its obligation to transfer to ZAO "Ekvator" a monetary sum of 3,000,000 rubles and the corresponding lack of right of claim on the part of the plaintiff to the return of the sum of money and the payment of interests for the use of the credit on the basis of credit contract No. 32/97 of 11/04/97.

The plaintiff has filed an appeal complaint concerning the decision of the court of 12/04/99.

ZAO "Ekvator" considers the arguments set forth in the appeal complaint as without basis for the following reasons:

In accordance with the unnumbered additional agreement of 26/12/97 and additional agreement No. 11 of 26/12/97, the bank should have transferred to ZAO "Ekvator" a sum of money equal to 3,000,000 rubles.

The bank did not fulfill its obligation. A monetary sum was not given to ZAO "Ekvator". Moreover, the bank is claiming through court process the return of the above-stated sum and the payment of interest for the use of the credit on the basis of credit contract No. 32/97 of 11/04/97 the additional agreements to it.

In confirmation of the fact of issuance of the credit, the bank refers to the transfer to ZAO "Ekvator" of securities — bills of exchange — and evaluates the given operation as a bill of exchange credit, which contradicts the norms of civil legislation.

Credit contracts may establish only completely monetary obligations - this is the specific feature of the given type of contracts (Article 819 of the Civil Code of the RF,

Decree of the Presidium of the Higher Arbitrazh Court of the RF of 07/07/98, No. 3762/98).

Thus, the obligation of ZAO "Ekvator", in connection with the transfer to it by the bank of bills of exchange may not be based on the credit contract between the parties which is the subject of the dispute. The given fact follows also from the factual circumstances of the case.

The subject of the credit contract No. 32/97 of 11/04/97 and of the additional agreements to it is the opening by the bank for ZAO "Ekvator" of a credit line and the provision to ZAO "Ekvator" of monetary sums by means of the transfer of them to the settlement account of ZAO "Ekvator" or to the settlement accounts of its contracting partners (point 1.2 of the unnumbered additional agreement of 26/12/97 and point 2 of the additional agreement No. 14 of 26/12/97), which was not done by the bank.

As concerns the bills of exchange, transferred by the bank to ZAO "Ekvator" the written document confirming the conclusion of the transaction is the act of transfer and acceptance of the bills of exchange. In the act of transfer and acceptance, the conditions on which the bills of exchange were transferred is not stated.

During the court consideration, despite the statement of the court (determination of 04/03/99), the legal basis for the claims made was never presented by the plaintiff.

The reference of the bank to the Letter of the Central Bank of the RF No. 26 of 23/02/95, supposedly regulating the issuance of so-called bill of exchange credits, is not appropriate, since it envisions the possibility for commercial banks to act only in the capacity of the issuer of a bill of exchange. (point 2 of the Letter) Moreover, the given Letter is not a normative document and has [only] a recommendatory nature for banks in the conduct of their banking operations. In particular, a procedure is recommended to banks for the conduct of accounting steps in the case of issuance by the banks of bills of exchange.

Thus, the claims of the bank, based on a credit contract, and its attempt to impose liability on ZAO "Ekvator" on the basis of the given type of contract are improper.

On the basis of that set forth, we request the appellate instance of the arbitrazh court for Samara Oblast to:

Leave the decision of the Arbitrazh Court of Samara Oblast of 12/04/99 in case No. A55-329/99-23 without change and the appeal complaint of the Samara branch of OAO AKB "TOKOBANK" without satisfaction.

I.P. Pavlova

Representative by power of attorney
No. 181 of 11/06/99